

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	MD Docket No. 12-201
Procedures for Assessment and Collection of)	
Regulatory Fees)	
)	
Assessment and Collection of Regulatory Fees)	MS Docket No. 08-65
For Fiscal Year 2008)	

REPLY COMMENTS OF FRONTIER COMMUNICATIONS

Frontier Communications Corporation (“Frontier”), by its undersigned counsel, hereby replies to the comments filed in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding (the “*Regulatory Fees NPRM*”),¹ and the *GAO Regulatory Fees Report* released September 10, 2012.²

I. INTRODUCTION & SUMMARY

Frontier agrees with the assessment of the Government Accountability Office (“GAO”) and other commenters that the Commission’s process for assessing and collecting regulatory fees suffers from internal inconsistencies and relies on obsolete data. Together with a general lack of transparency into the fee development process, these failings are harmful not only to competition but also to consumers. As explained

¹ *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458 (2012).

² Government Accountability Office, *Regulatory Fee Process Needs to be Updated*, GAO 12-686 (Aug. 2012). See also *Office of Managing Director Seeks Comment on Government Accountability Office Regulatory Fees Reform Report and Extends Reply Comment Deadline for Regulatory Fees Reform Rulemaking*, Public Notice, MD Docket 12-201, DA 12-1527 (rel. Sept. 24, 2012) (inviting reply comments by October 23 on both the *Regulatory Fees NPRM* and the *GAO Regulatory Fees Report*).

below, Frontier supports a comprehensive overhaul of the regulatory fee system to address these problems and achieve the fairness, administrative ease, and sustainability that the Commission seeks.³

II. THE COMMISSION’S FEE ASSESSMENTS SHOULD BE REGULARLY UPDATED TO REFLECT CHANGES IN INDUSTRY& REGULATION

Year after year, FCC commissioners have argued that overhaul of the Commission’s regulatory fees is overdue. In 2009, acting Chairman Copps stated: “The world – and the way we regulate – has changed dramatically. It’s time for our regulatory fees to change as well.”⁴ In 2012, that reform is even more urgently needed.

Commissioner Pai recently observed:

In 1998 [when the current system was adopted], each industry segment largely still played in its own sandbox – telephone companies offered telephone service, cable operators offered cable television, and so on. But today’s currency is convergence: Telephone companies have entered the video market, cable operators are winning voice customers, satellite operators offer competitive radio, television, and broadband services, and wireless providers have unleashed a mobile revolution few if any saw coming.⁵

Frontier agrees. The current system bears little relation to industry realities, and is especially harmful to competition, giving artificial advantages to some providers. This is because, as GAO concludes, the Commission’s current fee assessment system relies on an obsolete set of fee categories,⁶ fails to account for current industry trends,⁷ and employs inconsistent methods for fee assessment, the combined effect of which is to

³ See *Regulatory Fees NPRM*, paras.14-16.

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, MD Dockets 09-65, 08-65, FCC 09-38 (rel. May 14, 2009), Statement of Acting Chairman Michael J. Copps.

⁵ *Regulatory Fees NPRM*, Statement of Commissioner Ajit Pai.

⁶ See *GAO Regulatory Fees Report* at 16-17, 22.

⁷ See *id.* at 12-15.

unfairly favor some service providers and classes of providers over others. In effect, the current system generates unjustified cross-subsidies among regulated entities, due mainly to the Commission's failure to review and reform its own methods since 1998.

The record supports the GAO's findings. For example, US Telecom observes that full-time equivalent employee ("FTE") counts for the Wireline Competition Bureau ("WCB") changed significantly between 2008 and 2011, and fees borne by the wireline industry could increase as much as 20 percent under the existing methodology. However, regulatory developments since 2011 undoubtedly will diminish the work of the WCB in the next few years. The Commission should not impose a multi-year fee increase on wireline carriers "due to the current anomalous situation" but instead should reassess FTE counts on a regular basis – ideally, each year.⁸

Interstate telecommunications service providers ("ITSPs") have been over-assessed for more than a decade, based on Fiscal Year 1998 FTE allocations.⁹ The GAO Regulatory Fees Report shows that *wireless* telephone revenues (not adjusted for inflation) *increased* by 437 percent from Fiscal Year 1998 to Fiscal Year 2011, while *wireline* telephone revenues *declined* by 44 percent; but during the same period the percentage of regulatory fees assessed to the *wireline* industry declined only *four* percent, while the percentage of regulatory fees assessed to the *wireless* industry increased just *five* percent. Even after adjusting for inflation, it is clear that the relative fees for wireless and wireline service providers were not adjusted proportionally to their respective industry growth and decline.

⁸ Comments of the United States Telecom Association, MD Docket 12-201, filed Sept. 17, 2012 ("US Telecom Comments"), at 4-5.

⁹ See *id.* at 2-3.

Moreover, while the Commission has adjusted the fees paid by international regulatees to account for activities of the International Bureau (“IB”)’s Strategic Analysis and Negotiations Division that may broadly benefit many sectors, it has failed to adjust the fees paid by ITSPs even though many activities of the Wireline Competition Bureau (“WCB”) clearly benefit other regulated entities. The USF/ICC Transformation Order, which made up a significant part of the WCB workload in 2011, affected virtually the entire communications and broadband industry, including wireless, cable, satellite and other regulated service providers. As US Telecom observes, the Commission should be consistent. If the Commission allocates 100 percent of the WCB FTEs to ITSPs, it should allocate 100 percent of IB FTEs to IB regulatees. Non-core functions performed by other Bureaus and Offices should be allocated in the same proportion as the FTEs of the four core Bureaus. Conversely, if a function performed by IB or another bureau is more akin to a non-core function, it should be moved out of IB. Otherwise, the Commission should be consistent, predictable and transparent in its FTE allocations.¹⁰

Similarly, the Commission’s continued employment of a multiplicity of methods for fee assessment – based on revenues for wireline providers, subscribers for wireless providers, equipment for satellite providers, to name a few – adds to the complexity of the current system but does not lead to a fair or administratively efficient scheme.¹¹

ITTA has called for the Commission to assess all voice service providers on the basis of

¹⁰ US Telecom Comments at 5-7.

¹¹ See *GAO Regulatory Fees Report* at 19-20 (wireline companies pay regulatory fees based on revenues, while wireless companies pay based on subscribers; cable system operators pay fees based on subscribers while direct broadcast satellite (“DBS”) operators pay based on satellites).

revenues rather than subscribers.¹² Wireless carriers report their revenues to the Commission just as wireline carriers do, so this would create no meaningful administrative burden.¹³ To the contrary, this would be an appropriate step toward recognizing the significant changes in relative revenues over the past two decades, and would help simplify the current system, where reform is long overdue.

Updating the FTE allocation annually would permit the Commission to align its regulatory fee scheme with the rapidly changing dynamics of the sectors it regulates.¹⁴ In 1998 the Commission adopted a complex set of 86 fee categories that remain in effect despite the Commission's subsequent abandonment of the cost-based methodology on which these categories were based.¹⁵ The Commission itself has identified problems with this system, and has not validated its results over the course of 13 years' experience, yet it continues to employ this outmoded set of categories.¹⁶

As GAO points out, although the Communications Act requires the FCC to base its regulatory fees on FTEs, reflecting the employee capital used in regulating, the statute does not preclude the Commission from revising its FTE analysis and adjusting fees more regularly than once in 13 years – GAO recommends reviewing the fee allocation at least

¹² Reply Comments of the Independent Telephone & Telecommunications Alliance (“ITTA”) in MD Docket 08-65, filed June 6, 2008, at 5-7 (noting that wireline revenue fell between 1999 and 2008 from \$67.8 billion to \$46.3 billion, while the fee burden increased roughly 75% over the same period; in contrast wireless subscribership increased from 55.5 million to 255 million from 1999 to 2008, while FCC per-subscriber fees *declined* from \$0.32 per unit in 1999 to \$0.17 per unit in 2008).

¹³ *GAO Regulatory Fees Report* at 20.

¹⁴ *See* US Telecom Comments at 4.

¹⁵ *GAO Regulatory Fees Report* at 17.

¹⁶ *Id.* at 11.

biennially.¹⁷ US Telecom and ITTA both recommend that the Commission *annually* update its FTE data, the basic building block for its fee assessments.¹⁸

Frontier agrees with these calls for reform and regular review of the basis for the Commission's fees. Consolidation and convergence within the industries subject to FCC regulation happen quickly. Significant changes in the regulatory landscape also occur more frequently than in the past, as competition accelerates and new services explode into the marketplace. The Commission should review its industry assumptions, review the effects of its fees, and reevaluate the system for fairness, administrative ease and sustainability, and make appropriate adjustments no less frequently than every two years, and annually whenever possible. More frequent adjustments should mean less chance of seismic shifts in assessments, and more predictability for both the Commission and the industry.¹⁹

III. THE COMMISSION'S FEE DEVELOPMENT PROCESS SHOULD BE MORE TRANSPARENT

Several comments criticize the current regulatory fee assessment as not only out-of-date but also difficult to validate. Frontier agrees with GAO and other parties who support change from the current fee assessment system to one that more closely aligns the fees assessed by the Commission with actual regulatory costs it incurs to regulate the

¹⁷ *GAO Regulatory Fees Report* at 16, 35.

¹⁸ Comments of ITTA in MD Docket 08-65, filed September 26, 2008, at 3; US Telecom Comments at 3-4.

¹⁹ *Cf. GAO Regulatory Fees Report* at 16 (noting that updating user fees at least biennially will help ensure not only that the fee scheme accurately captures changes in the distribution of the agency's work, but also that the FCC's method is consistently used, and its results can be compared year to year, giving the Commission opportunities to make refinements as necessary).

assessed parties, and then can be validated each year through greater FCC disclosure and public review.²⁰

GAO concluded that the Commission “has not been transparent in describing its regulatory fee process in its recent annual NPRMs and Reports and Orders.”²¹ Among other issues, GAO cites the Commission’s failure to explain the relationship between the current regulatory fees and the agency’s costs or FTE allocations.²² Nor has the Commission explained how its discretionary adjustments to the assessment rate for some fee categories affects the rates in others.²³ In addition, since 2002 the Commission has failed to explain that the division of regulatory fees among categories continues to be based on its 1998 FTE analysis²⁴ which, as described above, bears no relation to industry reality.

In addition, as several parties note, the Commission has over-recovered more than \$66 million in regulatory fees which ought to be refunded to the regulated industry. Aside from the inequity of paying more than is statutorily required, a trend that the Commission should strive to reverse, the Commission ought to ask Congress for authority to refund excess fees to the entities from whom they were collected.²⁵ Frontier agrees with US Telecom that those funds serve no purpose in an unallocated account at

²⁰ See *id.* See also US Telecom Comments at 4-5; Comments of ITTA in MD Dockets 09-65 and 08-65, filed June 4, 2009, at 3.

²¹ GAO *Regulatory Fees Report* at 23.

²² *Id.* at 24.

²³ *Id.* at 24-25.

²⁴ *Id.* at 24.

²⁵ US Telecom Comments at 7-8; Verizon Comments at 3; GAO *Regulatory Fees Report* at 25 (FCC under-recovered only once and over-recovered nine times in ten years).

the Department of Treasury; they properly belong to the fee payers and should be rebated or, at a minimum, credited against future fiscal year assessments.²⁶

The FCC should heed GAO's recommendations for improving transparency, including reporting Commission costs and FTEs in a timely manner, clearly detailing the basis for annual assessments, and fully explaining the effect of fee adjustments on specific categories of fee payers.²⁷

IV. THE FCC REGULATORY FEE SCHEME IS UNFAIR TO WIRELINE CARRIERS AND HARMFUL TO CONSUMERS

GAO correctly points out that the flaws in the current regulatory fee assessment system described above yield unfair outcomes from the standpoint of costs and industry trends. They result in implicit cross-subsidies between industry sectors.²⁸ Though GAO concludes that such cross-subsidies effectively stem from the obsolete FTE analysis employed by the Commission rather than any intent to discriminate,²⁹ the result is a skewing of the financial burden of regulation that the Commission cannot justify under its statutory mandate. Among industry sectors that directly compete for customers – as wireline carriers do with both wireless carriers (for voice and broadband customers) and with multichannel video programming distributors (“MVPDs”) such as cable and DBS operators (for broadband and video customers) – such unjustified cross-subsidies create a competitive disadvantage that goes directly to the bottom line.³⁰

²⁶ US Telecom Comments at 7.

²⁷ *Id.* at 23-24.

²⁸ *GAO Regulatory Fees Report* at 17-19.

²⁹ *Id.* at 18.

³⁰ *Id.* at 18-19.

V. CONCLUSION

For the foregoing reasons, Frontier respectfully urges the Commission to head the GAO's recommendations and conduct a thorough update and simplification of the fee scheme, taking into account industry trends and putting competitors on more even footing.

Respectfully submitted,

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